

STEPTOE & JOHNSON

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WASHINGTON, D. C. 20036

ROBERT J. CORBER

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December 16, 1988

Ms. Noreta R. McGee

Secretary

Interstate Commerce Commission

Room 2215

Washington, D.C. 20423

INTERSTATE COMMERCE COMMISSION

DEC 16 1988

RECORDATION NO.

16038-A

8--351A100

DEC 16 1988

Date

Fee \$ 13.00

ICC Washington, D.C.

Dear Ms. McGee:

Enclosed for filing and recordation pursuant to the provisions of 49 U.S.C. §11303 are the original and three (3) copies of the document hereinafter described. The Document relates to the railroad equipment identified below.

1. Lease Amendment Agreement dated as of November 1, 1984 between Brae Transportation, Inc., lessor, and Texas, Oklahoma & Eastern Railroad Company, lessee, and Mississippi and Skuna Valley Railroad Company, lessee.

The equipment subject to this document consists of 550 railroad cars bearing the marks TOE 5100 - 5124, 5200- 5227, 5229 - 5230, 5300 - 5366, 5400 - 5427, 5500 - 5549, 5000 - 5073, 5125 - 5170, 5600 - 5666, 5668 - 5695, 5700 - 5756, 5800 - 5827, and 5828 - 5877, inclusive.

The names and addresses of the parties to the document are as follows.

Lessor: Brae Transportation, Inc.

One Hundred Sixty Spear Street
San Francisco, CA 94105

Lessee: Texas, Oklahoma & Eastern Railroad Company

810 Whittington Ave.
Hot Springs, Arkansas 71901

and
Mississippi and Skuna Valley
Railroad Company

P.O. Box 265

Bruce, MS 38915

Please file and record the document and index it under the names set forth above. Since this is a secondary document related to the Lease Agreement recorded under Recordation Number

*Countersigned
for [Signature]*

Ms. Noreta R. McGee
December 16, 1988
Page Two

16038, it is requested that this document be given the next available letter designation under Recordation Number 16038. We are informed that the next available letter designation is A.

A fee of \$13.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to the person presenting this letter.


A short summary of the document to appear in the index follows:

1. Lease Amendment Agreement dated as of November 1, 1984 between Brae Transportation, Inc., and Texas, Oklahoma & Eastern Railroad Company covering 550 railroad cars bearing TOE marks as stated in the document.

Since this document also relates to documents previously recorded under Recordation Nos. 9762, 10630, 11879 and 12426, it is requested that this document be cross-indexed under those Recordation Numbers. It is further requested that the following document which is related to the foregoing documents, be cross-indexed under Recordation Numbers 9762, 10630, 11879 and 12426:

1. Lease Agreement dated as of November 1, 1984 between Brae Transportation, Inc., and Texas, Oklahoma & Eastern Railroad Company, assigned Recordation Number 16038.

Very truly yours,



Robert J. Corber
Attorney for Brae
Transportation, Inc.

Enclosures as stated

LEASE AMENDMENT AGREEMENT

DEC 16 1988 10:15 AM
RECORDATION NO. 16038-A Filed 12/23

This Agreement is made as of this 1st day of November, 1984 between BRAE Transportation, Inc., a Delaware corporation, successor of BRAE Corporation ("BRAE"), Railease Inc., a Washington Corporation ("Railease"), collectively the "Lessor", and Texas, Oklahoma & Eastern Railroad Company, an Oklahoma corporation ("TO&E"), and Mississippi and Skuna Valley Railroad Company ("MSV"), collectively the "Lessee".

RECITALS

- A. Lessor and Lessee have entered into the following lease agreements which are collectively referred to as the "Original Leases":
1. Agreement, dated June 1, 1980, between Railease and TO&E concerning 200 XP boxcars.
 2. Agreement, dated July 1, 1980, between BRAE and TO&E concerning 50 XP boxcars.
 3. Agreement, dated July 2, 1980, between BRAE and TO&E concerning 50 XP boxcars; and
 4. Agreement, dated January 4, 1983, among MSV, TO&E, and BRAE concerning the assignment of 25 XP boxcars by the MSV to the TO&E.
- B. Lessor and Lessee have also entered into the following agreements concurrently with this Agreement:
1. Lease Agreement, dated November 1, 1984, pursuant to which BRAE is leasing 500 boxcars to TO&E (the "New Lease");
 2. Assignment Agreement, dated November 1, 1984, pursuant to which TO&E is assigning 100 boxcars, to the Old Augusta Railroad Company; and
 3. Letter Agreement, dated November 1, 1984, pursuant to which BRAE agrees to consent to the Assignment Agreement with Old Augusta Railroad Company and to arrange for the assignment of an additional 100 boxcars, currently under lease by TO&E from BRAE.
 4. Letter Agreement, dated November 1, 1984, pursuant to which TO&E is storing 50 boxcars owned by BRAE.
- C. Lessor and Lessee desire to amend the Original Leases as set forth herein.

AGREEMENTS

NOW THEREFORE, it is agreed as follows:

1. Section 3B of the original Leases is deleted and replaced by the following:

"B. If, during any one calendar month the average utilization of all Cars falls below 78.3%, then BRAE may, by written notice to Lessee of such an event, require that Lessee load, or order the loading of, all Cars on its tracks prior to loading, or ordering the loading of, (i) any substantially similar boxcars of other railroads interchanged onto Lessee's tracks; (ii) any substantially similar boxcars placed in assigned service on Lessee's tracks subsequent to the date hereof, or (iii) any substantially similar boxcars purchased or leased by Lessee subsequent to the date hereof; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefore to shippers on its railroad tracks. For the purposes of this Agreement, the "obligations to provide transportation and facilities upon reasonable request therefore to shippers on its railroad tracks" referred to in the previous sentence shall mean only the following: (i) boxcars interchanged from Lessee's connecting carriers under load may be reloaded, provided, however, that such loadings shall be limited to 150 per calendar quarter; and (ii) in the event that there are fewer than 100 empty boxcars on Lessee's railroad tracks available for loading, including a reserve pool of up to 50 boxcars owned by BRAE but not subject to this Agreement but excluding boxcars spotted for loading at Weyerhaeuser's Valiant mill and any "bad ordered" Cars, which are defined as Cars unavailable due to maintenance or repair requiring more than twenty (20) man hours of labor, Lessee may order boxcars from other railroads in a number equal to the difference between Lessee's inbound boxcar forecast for the next 48 hour period and the Valiant mill's forecast of boxcar requirements for such period. The standard of 150 reloadings and 100 empty boxcars described in subprovisions (i) and (ii), respectively, of this Section 3B, shall be adjusted proportionately in the event that Lessee's aggregate boxcar loadings increase or decrease by more than 25% from Lessee's 1984 loadings. In the event that Lessee intends to load or order the loading of foreign cars as set forth in subprovision (ii) above and Lessee is under written priority notice from BRAE, Lessee shall advise BRAE of the actions it has taken as required hereby. In no event shall Lessee act as a switching railroad for any facility currently owned by Weyerhaeuser Company and presently operating on Lessee's tracks with respect to any boxcars substantially similar to the Cars. Any priority loading required under this paragraph shall be commenced as soon as practicable after receipt of BRAE's notice by Lessee (but not to exceed two days) and shall continue until such time as the average utilization of all Cars shall equal or

exceed 78.3% for one calendar month. While priority loading is in effect, Lessee shall, upon reasonable request by BRAE, furnish to BRAE its records with respect to loadings and shipments. In the event that Lessee does not priority load the Cars in violation of this Section 3B, Lessee agrees to remit to BRAE \$500 as liquidated damages for each time that a boxcar is loaded in violation of the Section 3B, provided, however, that Lessee shall be obligated to make such payments to BRAE only until BRAE has received revenues equal to the revenues the Cars would have earned if they had earned hourly car hire payments equal to 78.3% Utilization (calculated monthly) and had earned mileage charges equal to 65 miles per day per Car (calculated monthly), but excluding any bad ordered Cars from such minimum revenue calculation."

2. Section 3D of the Original Leases is amended by adding the following:

"It is also understood and agreed that the boxcars subject to the Original Leases and the New Lease shall have equal priority as to loading on Lessee's railroad."

3. A new Section 3E is added to the Original Leases as follows:

"E. In the event (i) Utilization of the total Lessor boxcar fleet (825 cars) shall be less than 75% in any calendar quarter and (ii) boxcars subject to the Original Leases receive a lesser number of loads than they would have received if Lessee's loadings had been divided proportionally between the boxcars subject to the New Lease and the boxcars subject to the Original Leases, then Lessee agrees to pay liquidated damages to Lessor in the amount of \$144 for each load less than the proportional share of loads in the boxcars subject to the Original Leases. This calculation of liquidated damages shall be made quarterly, and, at Lessee's option, Lessee may make payment to Lessor at such time, or, if in the succeeding calendar quarter the boxcars subject to the Original Leases shall have received additional loads in excess of the proportional share of loads, Lessee shall receive credit for each additional load. At the end of such succeeding calendar quarter, the liquidated damages shall be recalculated to take into account credit earned for additional loads, and any remaining liquidated damages shall be paid at such time."

4. A new Section 3F is added to the Original Leases as follows:

"F. Utilization of Cars for any period shall mean a fraction, the numerator of which is (x) the aggregate number of Car Hours in such period that car hire payments are earned by Cars and the denominator of which is (y) the aggregate number of Car Hours during such period. Car Hour shall mean one hour during which one Car is on lease hereunder, commencing upon the initial loading of such Car, less any hours, or portion thereof, in which the Cars are unavailable because of maintenance or repair."

5. Section 6A of the Original Leases is deleted and replaced by the following:

- "A. (i) Lessee agrees to pay Lessor as annual rent for the use of the Cars all payments earned by Lessee from other railroad companies for their use or handling of the Cars, including but not limited to mileage charges and hourly car hire payments (all of which payments made to Lessee are hereinafter collectively referred to as "Payments"); provided, however, that Lessee may, after notice to Lessor, reduce the rate of hourly car hire payments other railroads pay to Lessee by an amount not to exceed thirteen and one-half percent (13.5%).
- (ii) The rent payable by Lessee to Lessor under this Section 6.A shall be derived from the revenues earned by the Cars. In no event shall Lessee be required to pay rent to Lessor under this Agreement in an amount in excess of the total revenues earned by the Cars.
- (iii) If any governmental agency, or any court shall at any time issue any order, the effect of which would be to (1) increase or decrease the applicable car hire or mileage rates, or (2) cause the Cars to incur storage charges or empty mileage charges while on other railroads, then, as of the effective date of such order, Lessee's right to reduce the rate of hourly car hire payments, as provided in Section 6.A(i), shall be increased or decreased by the same percentage that Lessor's rent for the Cars is increased or decreased. In the event of a change in payment method, including but not limited to the elimination of hourly car hire payments, then Lessee shall be entitled to the same opportunity to reduce payments as it has in Section 6A(i) with respect to any new method of payment."

6. Section 13E of the Agreement, dated June 1, 1980, is amended to read as follows:

"E. This Agreement, and all amendments thereto, shall be governed by and construed according the the laws of the State of California."

7. Except as amended herein, the terms and conditions of the Original Leases shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Amendment Agreement as of the date first above written.

BRAE TRANSPORTATION, INC.

By

Printed Name LAWRENCE W BRISCOE

Title PRESIDENT

TEXAS, OKLAHOMA & EASTERN
RAILROAD COMPANY

By

Printed Name John D. Selig

Title President

RAILEASE, INC.

By

Printed Name Robert W. Dickey

Title

President

MISSISSIPPI & SKUNA VALLEY
RAILROAD COMPANY

By

Printed Name

Title

EQUIPMENT SCHEDULE I

BRAE TRANSPORTATION, Inc. ("BRAE") hereby leases the following railcars to Texas, Oklahoma & Eastern Railroad Company ("Lessee"), pursuant to that certain Lease Agreement dated as of November 1, 1984 (the "Lease").

<u>Number of Cars</u>	<u>Description</u>	<u>Design- ation</u>	<u>Car Numbers</u>	<u>Dimensions</u>
25	Plate C, 70-ton, end of car cushioning, double 8' - 0" sliding doors	XM	TOE 5100-5124	50' 6" in length
28	Plate C, 70-ton, end of car cushioning, double 8' - 0" sliding doors	XM	TOE 5200-5227	50' 6" in length
2	Plate C, 70-ton, end of car cushioning, double 8' - 0" sliding doors	XM	TOE 5229-5230	50' 6" in length
67	Plate C, 70-ton, end of car cushioning, double 8' - 0" sliding doors	XM	TOE 5300-5366	50' 6" in length
28	Plate B, 70-ton, end of car cushioning, double 8' - 0" sliding doors	XM	TOE 5400-5427	50' 6" in length
50	Plate B, 70-ton, end of car cushioning, double 8' - 0" sliding doors	XM	TOE 5500-5549	50' 6" in length
<u>200</u>				

EQUIPMENT SCHEDULE 2

BRAE TRANSPORTATION, Inc. ("BRAE") hereby leases the following railcars to Texas, Oklahoma & Eastern Railroad Company ("Lessee"), pursuant to that certain Lease Agreement dated as of November 1, 1984 (the "Lease").

<u>Number of Cars</u>	<u>Description</u>	<u>Design- ation</u>	<u>Car Numbers</u>	<u>Dimensions</u>
74	Plate C, 70-ton, end of car cushioning, double 8' - 0" sliding doors	XM	TOE 5000-5073	50' 6" in length
46	Plate C, 70-ton, end of car cushioning, double 8' - 0" sliding doors	XM	TOE 5125-5170	50' 6" in length
67	Plate C, 70-ton, end of car cushioning, double 8' - 0" sliding doors	XM	TOE 5600-5666	50' 6" in length
28	Plate C, 70-ton, end of car cushioning, double 8' - 0" sliding doors	XM	TOE 5668-5695	50' 6" in length
57	Plate C, 70-ton, end of car cushioning, double 8' - 0" sliding doors	XM	TOE 5700-5756	50' 6" in length
28	Plate C, 70-ton, end of car cushioning, double 8' - 0" sliding doors	XM	TOE 5800-5827	50' 6" in length

300

EQUIPMENT SCHEDULE I

BRAE TRANSPORTATION, Inc. ("BRAE") hereby agrees to store and make available for use the following railcars for use by Texas, Oklahoma & Eastern Railroad Company ("TOE"), pursuant to the letter agreement dated November 1, 1984.

<u>Number of Cars</u>	<u>Description</u>	<u>Designation</u>	<u>Car Numbers</u>	<u>Dimensions</u>
50	Plate C, 70-ton end of car cushioning, double 8'0" sliding doors	XM	TOE 5828-5877	50'6" in length